IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Deborah S. Wintersmith,	*	Case No.: CI0201503020
	*	
Plaintiff-Appellant,	*	
	*	JUDGE IAN B. ENGLISH
-vs-	*	
	*	
Blueline Express Taxi and Medical Transportation, LLC, et al.,	*	**OPINION AND JUDGMENT ENTRY**
	*	
	*	
Defendants-Appellees.	*	

This is an appeal from a decision of the Ohio Unemployment Compensation Review Commission, which disallowed an application for unemployment benefits filed by plaintiff-appellant, Deborah S. Wintersmith, on grounds that she quit her employment without just cause. Having fully reviewed the entire administrative record, the arguments of counsel, and the applicable law, particularly the standard of review set forth in R.C. 4141.282(H), the court finds that the commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence and must, therefore, be affirmed.

A. Background

On January 5, 2015, appellant filed an Application for Determination of Benefit Rights with Ohio Department of Job and Family Services, Office of Unemployment Compensation

("ODJFS"), claiming that she had been separated from employment with defendant-appellee Blueline Express Taxi and Medical Transportation, LLC ("Blueline") due to lack of available work. Responding to requests for additional information by ODJFS, appellant explained that her employment was terminated after she demanded remuneration in accordance with her wage agreement and that her last day of work was December 5, 2014. In its response to information requests by ODJFS, Blueline stated that appellant quit working on November 26, 2014, after being informed to reduce her hours of work due to lack of productivity. On February 6, 2015 ODJFS issued a Notice of Determination that appellant's application was disallowed on grounds that she quit her employment without just cause, finding that appellant "did not discuss his/her objections with the employer, or did not allow the employer reasonable time to correct the situation."

Appellant filed an appeal from the initial determination and, on February 25, 2015, defendant-appellee Director of ODJFS issued a "Redetermination" affirming the disallowance of appellant's application. Appellant then appealed the Director's redetermination and, on February 27, 2015, ODJFS transferred jurisdiction to the Ohio Unemployment Compensation Review Commission ("UCRC"). On April 7, 2015, the matter proceeded to hearing by telephone before a UCRC Hearing Officer.

The transcript of the hearing reveals, as does the totality of the administrative record, what is literally a tale of two perspectives on how and why appellant came to be separated from her employment at Blueline. It should be noted, however, that the parties' testimony at the hearing is not altogether coherent, consisting in large part of diffuse and temporally disconnected statements that are often interrupted by significant phonetic omissions identified as "[inaudible]" in the transcribed text.

Appellant testified that beginning the third week of April 2014, and through May 2014, she worked "per diem, as needed" for Blueline's sister company, First Class Home Health Care. It appears that during that time, appellant was also working full time for her former employer, HCR ManorCare, where she had been employed for nine and one-half years. Sometime prior to the end of May 2014, appellant was approached by Abdul Faqi, the owner of Blueline, who asked if she would be interested in a full-time position with Blueline. On June 1, 2014, following numerous discussions and negotiations with Mr. Faqi, Mr. Faqi's brother Hussein Ahmed, and Mr. Faqi's cousin Yahya Ibrahim, all of whom "seemed to co-manage the company," appellant left HCR ManorCare and began full-time employment as Blueline's Operations Manager for an agreed-upon annual salary of $46,000 plus benefits.

Appellant's duties at Blueline were "multiple and varied," but her primary responsibility was to procure and administer contracts with insurance companies for medical transportation services. Over the next several months, Mr. Faqi grew dissatisfied with the sluggish pace of the insurance-reimbursement process and blamed appellant for the lack of celerity in payments. Multiple confrontations ensued in which Mr. Faqi berated appellant in front of others, and those confrontations "became increasingly aggressive to the point that [appellant] was concerned for [her] well being."

In September 2014, Blueline became "financially stressed * * * to the extent that they had gone through their set aside money and Yahya Ibrahim loaned Mr. Faqi $48,000 and Mr. Faqi came to [appellant] and said we're going under. We can't get these [insurance] payments fast enough, we think it's your fault * * *." Mr. Faqi also informed appellant that "because of his large financial donation, [Mr. Ibrahim would thereafter] assume a great deal of responsibility" in operating the company. At that time, appellant was asked to wait on

repayment for some of the business expenses that the company had charged to her personal credit accounts until Blueline started receiving its reimbursement payments from the insurance companies. Appellant agreed to defer the receipt of her outlay for company expenses, but did not agree to renegotiate her salary.

Beginning October 2014, appellant received sporadic payments from Blueline in regard to the outstanding expenses, but did not receive any of her salary or hourly wage. Appellant became increasingly adamant that she "can't work for free" and also expressed concerns over her discovery of certain allegedly illegal or improper business practices on the part of Blueline. Mr. Ibrahim and Mr. Faqi then took various measures to eliminate appellant's employment without directly firing her. In October, they contacted Blueline's three primary clients and advised them that appellant was no longer authorized to represent Blueline. In November, during the week of Thanksgiving, Mr. Faqi left the country and appellant never saw him again. At or around that time, Mr. Ibrahim took control of Blueline's operations, changed the computer passwords, confiscated appellant's flash drive, broke her printer, moved the company office into a different suite to which appellant did not have a key, denied appellant access to the new office without supervision, and interviewed and hired appellant's replacement in her presence. Finally, on December 2, 2014, which was Tuesday following the Thanksgiving holiday, Mr. Ibrahim informed appellant, "I don't have anything for you right now, but we'll be in contact." No further contact occurred.

Appellant also presented testimony from Louay Salman, a co-employee who worked for Blueline at the time of appellant's separation. Mr. Salman initially testified that although he did not witness appellant's termination from employment, Mr. Ibrahim told him that appellant was discharged. However, upon further questioning by the hearing officer and Blueline's counsel,

Mr. Salman admitted that that Mr. Ibrahim never affirmatively stated that appellant was "fired," but merely asserted, "I am the boss, * * * she [appellant] is not the boss."

On the other hand, Mr. Ahmed presented a markedly different version of both appellant's employment status with Blueline and the circumstances surrounding and leading to her separation from the company. Mr. Ahmed introduced himself as Blueline's Office Manager and testified that he had no ownership interest in the business, although he later stated on cross-examination, "I have authority to hire and fire." Mr. Ahmed testified that he was present when appellant was hired at Blueline on June 1, 2014, that appellant was retained as an "independent contractor," and that appellant has "never been an employee" of Blueline. Specifically, Mr. Ahmed stated that appellant "was working as a consultant with Blueline * * * not an employee who clocked in and clocked out. [S]he come[s] when she wants and she leaves when she wants and nobody ask[s] her questions."

According to Mr. Ahmed, appellant last "showed up" for work on November 25, 2014, but she was neither terminated from her employment at Blueline nor pressured to quit. Rather, "she decided to quit" on her own. Mr. Ahmed explained that Blueline hired appellant for her purported expertise in "applying" and "bringing back" contracts related to medical transportation services. In October or November 2014, however, the company informed appellant that it decided to reduce her pay to $300 per week "because she's not bringing on time the contract[s] that we were expecting." Appellant responded that "$300 is two days worth of my time * * * and Abdul told her, okay you want to work two days for $300 its okay * * *."

Mr. Ahmed denied appellant's assertions with respect to the changing of her computer passwords, claiming instead that "she took our hard drives, our employee file, everything with her [and that the] computer we get unlocked yesterday from Best Buy." He also denied the

occurrence of any confrontations between Mr. Faqi and appellant, as well as the purported nonpayment of her salary. Further, Mr. Ahmed explained that no one had been hired to replace appellant; that the person claimed by appellant to be her replacement was hired as a dispatcher; and that the locks on the office doors were changed, but that transpired in "January [2015] when [appellant] came in the middle of nowhere and started taking pictures * * *, we asked her to give us the key and she said change the locks if you want and she left." In regard to the other measures allegedly taken to eliminate her employment, such as revoking her authority to issue company checks and communicate with clients, Mr. Ahmed testified that none of that occurred until late November or early December, after appellant had already quit her employment. Mr. Ahmed also explained that although some company expenses were charged to one of appellant's personal accounts, it was appellant, not Blueline, who insisted on that arrangement; and appellant refused Mr. Ahmed's request to transfer that account to his name. When asked if the company still owed appellant for outstanding expenses, Mr. Ahmed replied, "Not really."

Finally, Mr. Ahmed testified that he visited appellant at her home sometime after November 26, 2014, and she asked "did I get fired and I said no, nobody fired you. It's still the same nothing changed * * *." Asked if he would have allowed appellant to continue her employment with Blueline in December 2014, and in January 2015, Mr. Ahmed answered "Absolutely" and "Yes," respectively.

On April 13, 2015, the hearing officer issued her decision affirming the Director's Redetermination and disallowing appellant's application on grounds that appellant quit her employment with Blueline without just cause. Pointing to what she perceived as "multiple inconsistencies in claimant's testimony," the hearing officer found "the employer's presentation of the facts to be more credible." According to the hearing officer, appellant's testimony was

"inconsistent, as it is unclear how she could have performed any work at all in November and December [2014] if her access to the computers had been revoked. Even if she had been able to do some work, it is not credible to think that an individual would work for nearly three months without pay and then continue to work for four additional days after she had been discharged." In contrast, the hearing officer continued, Mr. Ahmed "presented credible, sworn testimony * * * that [appellant] simply stopped reporting to work after November 26, 2014," that Blueline had not hired anyone "to replace the claimant," and that "Mr. Ibrahim [never] told claimant that no more work was available for her."

The UCRC denied appellant's request for further review on May 20, 2015, and appellant filed a timely notice of appeal with this court on June 16, 2015, naming Blueline and the Director of ODJFS as appellees pursuant to R.C. 4141.282(D). Appellant submitted a brief in support of her appeal on October 7, 2015, and the Ohio Attorney General filed an opposing brief on behalf of appellee Director on November 10, 2015. Blueline has not submitted a brief.

B. Standard of Review

Judicial review of UCRC decisions is governed by R.C. 4141.282(H), which provides:

> The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

In authorizing reversal only upon a predicate finding that the commission's decision contravenes the manifest weight of the evidence, the General Assembly has chosen to apply "an extremely deferential standard of review." *State ex rel. Pizza v. Strope*, 54 Ohio St.3d 41, 46, 560 N.E.2d 765 (1990). *See also Elliott v. Bedsole Transp., Inc.*, 6th Dist. Lucas No. L-11-1004, 2011-Ohio-3232, ¶ 12 ("We must apply a deferential standard of review in this matter and

determine whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence"); *Jones v. Jones*, 4th Dist. Athens No. 07CA25, 2008-Ohio-2476, ¶ 18 ("This standard of review is highly deferential").

In *Sinclair v. Ohio Dept. of Job & Family Servs.*, 8th Dist. Cuyahoga No. 101747, 2015-Ohio-1645, ¶ 7, the Eighth District Court of Appeals explained:

> Reviewing courts are precluded from making factual determinations or determining the credibility of the witnesses in unemployment compensation cases—that is the commission's function as the trier of fact, and reviewing courts must defer to the commission on factual issues regarding the credibility of witnesses and the weight of conflicting evidence. *Irvine* [*v. Unemp. Comp. Bd. of Review*], 19 Ohio St.3d [15] at 18, 482 N.E.2d 587 [1985]; *Tzangas*[, *Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694] at 696, 653 N.E.2d 1207 [1995]. The courts' role is to determine whether the decision of the commission is supported by some competent, credible evidence in the record. *Tzangas*. If there is evidence in the record to support the commission's decision, a reviewing court cannot substitute its own findings of fact for those of the commission. *Lorain Cty. Aud. v. Unemp. Comp. Rev. Comm.*, 9th Dist. Lorain No. 03CA008412, 2004-Ohio-5175, ¶ 8. Moreover, every reasonable presumption should be made in favor of the commission's decision and findings of fact. *Banks v. Natural Essentials, Inc.*, 8th Dist. Cuyahoga No. 95780, 2011-Ohio-3063, ¶ 23, citing *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988). "The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. * * * When the board might reasonably decide either way, the courts have no authority to upset the board's decision." *Irvine*, 19 Ohio St.3d at 18, 482 N.E.2d 587; *Struthers v. Morell*, 164 Ohio App.3d 709, 2005-Ohio-6594, 843 N.E.2d 1231, ¶ 14 (7th Dist.).

C. Propriety of Hearing Officer's Decision

Appellant contends that there is no competent, credible evidence in the record to support the hearing officer's determination that she quit her employment without just cause. Appellant maintains that the only competent evidence on that issue is her own uncontradicted, sworn testimony that "she was terminated by Mr. Ibrahim * * * and that her termination was attributed to a lack of work." She argues that the hearing officer's determination to the contrary was improperly based on Mr. Ahmed's testimony denying that Mr. Ibrahim had discharged her from

employment on December 2, 2014. Specifically, appellant asserts that "Mr. Ahmed's testimony on that issue is not 'competent' evidence because Mr. Ahmed was never identified as a party to the conversation, or as having overheard any [such] conversation." Appellant further asserts that the absence of any presence or testimony by Mr. Ibrahim at the hearing is particularly telling considering that she "had clearly disclosed in her claim filings that her claim of termination was based on her conversation with Mr. Ibrahim."

Appellant additionally contends that "the Hearing Officer's rationale for discrediting [her] testimony is simply not logical." Appellant argues in particular that although the failure to pay wages would certainly constitute just cause for quitting, "whether [she] would have been justified to quit her employment based on [Blueline's] failure to pay her the compensation which was owed to her * * * is not the issue." Instead, appellant asserts, the relevant question is whether Blueline presented any competent evidence to refute her testimony regarding the conversation she had with Mr. Ibrahim. Moreover, the hearing officer's disbelief that appellant continued to work without pay or computer access is, according to appellant, contrary to Mr. Ahmed's own testimony that appellant did, in fact, continue to work until at least November 26, 2014. Appellant concludes, therefore, that the hearing officer improperly "discarded [her] uncontradicted testimony relating to * * * her conversation with Mr. Ibrahim, and rather relies on the incompetent * * * testimony of Mr. Ahmed concerning a conversation he was neither a party to [n]or overheard."

The Director maintains that the record includes more than sufficient evidence to support a finding that appellant quit her employment without just cause. In support, the Director points to Mr. Ahmed's testimony that "no one had fired Ms. Wintersmith, * * * that no one was hired to replace her prior to her separation from Blueline * * * that there was work available for Ms.

Wintersmith and [that] she would have been welcome to return to her employment in December 2014, or January 2015." With respect to Mr. Ahmed's testimony denying the conversation in which Mr. Ibrahim purportedly terminated appellant's employment, the Director argues that the UCRC "is permitted to consider hearsay testimony in making unemployment-compensation decisions." In regard to appellant's argument that the hearing officer unreasonably discredited her testimony, the Director responds that "evaluating the evidence and assessing the credibility of witnesses are the primary function of the trier of fact, and not of a reviewing court."

A claimant is not entitled to payment of unemployment benefits if he or she "quit work without just cause or has been discharged for just cause in connection with the individual's work." R.C. 4141.29(D)(2)(a). Conversely, "a party is entitled to unemployment compensation benefits if he or she quits with just cause or is discharged without just cause." *Upton v. Rapid Mailing Servs.*, 9th Dist. Summit No. 21714, 2004-Ohio-966, ¶ 13. *Accord Ro-Mai Indus. v. Weinberg*, 176 Ohio App.3d 151, 2008-Ohio-301, 891 N.E.2d 348 ¶ 9 (9th Dist.). Although the statute omits a definition of "just cause," the Supreme Court of Ohio has broadly stated that "'just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.'" *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985), quoting *Peyton v. Sun T.V. & Appliances* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). Thus, "just cause to quit work [is] that which, to an ordinarily intelligent person, is a justifiable reason for quitting, where that cause is related in a substantial way with the person's ability to perform in his employment capacity." *Heinze v. Giles*, 69 Ohio App. 3d 104, 111, 590 N.E.2d 66 (4th Dist.1990).

Ohio appellate courts, including the Sixth District Court of Appeals, have consistently held that the failure to pay wages constitutes just cause for quitting work. *McNeil Chevrolet, Inc.*

v. Unemp. Comp. Rev. Bd., 187 Ohio App.3d 584, 2010-Ohio-2376, 932 N.E.2d 986, ¶ 26-27 (6th Dist.) (requests for uncompensated work constitutes just cause for quitting employment); *Taylor v. Unemp. Comp. Bd. of Rev.*, 76 Ohio App.3d 405, 408-409, 601 N.E.2d 670 (10th Dist. 1991) (failure to pay legal rate of overtime is just cause for quitting employment); *Babcock v. Dick Sherman Disposal, Inc.*, 5th Dist. Coshocton No. 84-CA-8, 1984 Ohio App. LEXIS 11340, 2 (Oct.12, 1984) (failure to pay wages within a reasonable time is just cause for quitting work); *Voss v. Bailey's Tree & Landscape Serv.*, 6th Dist. Sandusky No. S-97-020, 1997 Ohio App. LEXIS 4804, 6-7 (Oct. 31, 1997) (requiring employee to begin work before he was allowed to punch in on time clock and refusing to compensate for the extra time constitutes just cause for quitting employment).

Based on the parties' arguments, the pivotal issue in this case is rather narrow: whether there is sufficient competent, credible evidence in the record to refute or discredit appellant's testimony that Mr. Ibrahim had discharged her from employment for lack of work on December 2, 2014. In discrediting appellant's testimony, the hearing officer relied in part on Mr. Ahmed's testimony denying that "Mr. Ibrahim told claimant that no more work was available for her." According to the Director, the hearing officer's reliance on this portion of Mr. Ahmed's testimony was appropriate, since hearsay evidence is not precluded in UCRC proceedings.

It is true that commission hearing officers "are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure," R.C. 4121.281(C)(2), and that hearsay is admissible and "must be taken into account in proceedings such as this where relaxed rules of evidence are applied." *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 44, 430 N.E.2d 468 (1982). Hearsay, however, is not the only basis upon which a witness' testimony can be deemed incompetent; and where a court "determines that there exist legally significant

reasons for discrediting certain evidence relied upon by the administrative body, and necessary to its determination, the court may reverse, vacate or modify the administrative order." *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265 (1980).

In this case, there is a legally significant reason for discrediting Mr. Ahmed's testimony independent of the hearsay rule. To be sure, Mr. Ahmed's testimony denying the statements purportedly made by Mr. Ibrahim to appellant does not even rise to the level of hearsay. There is no evidence in the present record to suggest that Mr. Ahmed heard or was present during the conversation between Mr. Ibrahim and appellant on December 2, 2014. In fact, Mr. Ahmed never testified that *Mr. Ibrahim* denied the occurrence or content of that conversation. Mr. Ahmed did not testify, for example, that Mr. Ibrahim related to him that such conversation never took place or that the attributed statements were never made. Simply put, there is no indication in the record that Mr. Ahmed, in denying the termination-related statements of Mr. Ibrahim, knew what he was talking about. "This has nothing to do with the hearsay rule; rather, it goes to the witness' competence. See Evid.R. 602." *Yoder v. Hurst*, 10th Dist. Franklin No. 07AP-121, 2007-Ohio-4861, ¶ 31. Evid.R. 602 reflects one of the most elementary principles of evidence that "knowledge of the matter" is a sine qua non of testimonial competence. The fact that the hearing officer was not bound by the Rules of Evidence did not entitle her to ignore this basic principle merely because it finds expression in an evidentiary rule. Indeed, R.C. 4121.281(C)(2) requires that hearing officers "exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs." In matters of importance, reasonably prudent persons are hardly disposed to elicit or rely on information imparted by those who lack any knowledge of the matter.

Nevertheless, Mr. Ahmed's denial of the conversation between appellant and Mr. Ibrahim was not the only evidence contradicting appellant's testimony in that regard. Mr. Ahmed also testified that the person allegedly hired to replace appellant was actually hired as a dispatcher for the company, that work was still available for appellant at the time of her departure, and that he would have allowed appellant to continue her employment in December 2014, and January 2015. In fact, Mr. Ahmed testified that he was invited to appellant's home during that time period and, in the course of his visit, appellant asked of her own volition, "did I get fired and [he] said no, nobody fired you. It's still the same nothing changed." Moreover, while the record reveals inconsistencies in the testimony of both parties, "evaluating the evidence and assessing the credibility of the witnesses are the primary function of the trier of fact, and not of a reviewing court." *Shaffer v. Ohio Unemp. Rev. Comm.*, 11th Dist. Ashtabula No. 2003-A-0128, 2004-Ohio-6956, ¶ 20. When confronted by inconsistent or conflicting testimony, the hearing officer, as the trier-of-fact, is generally free to believe each witness completely, in part, or not at all. *See Kovacic v. Higbee Dept. Stores*, 11th Dist. Lake No. 2004-L-150, 2005-Ohio-5872, ¶ 17-18. Considering the totality of the evidence contained in the certified transcript, the court finds that the hearing officer's decision that appellant quit her employment without just cause is not unlawful, unreasonable, or against the manifest weight of the evidence.

The court feels compelled to note that this case exemplifies the deferential nature of the applicable standard of judicial review. Quite frankly, this court may well have decided the case in favor of appellant under a standard of de novo review. However, since the record contains sufficient competent, credible evidence to support a decision either way, the court is constrained by R.C. 4141.282(H) to affirm the commission's decision disallowing appellant's application for unemployment benefits.

JUDGMENT ENTRY

The court finds that the decision issued by the Unemployment Compensation Review Commission ("UCRC") determining that plaintiff-appellant, Deborah S. Wintersmith, quit her employment without just cause is not unlawful, unreasonable, or against the manifest weight of the evidence. It is Ordered that the decision of the UCRC disallowing appellant's Application for Determination of Benefit Rights is Affirmed.

January 12, 2016
Date

Judge Ian B. English